

OLC 78-0277

17 January 1978

MEMORANDUM FOR THE RECORD

SUBJECT: S. 826, Department of Energy Organization Act

1. As passed by the Senate, S. 826 contained possible problems for the continued protection of sensitive information. Subsection 204(d)(3) stated that the Administrator of the Energy Information Administration (EIA) may publish statistical or forecasting technical reports without obtaining approval of their substance from any employee of the United States. Subsection 204(f)(1) provided that the Administrator should provide to Congress upon request all information in his possession, and subsection 204(f)(3) required that information collected by the EIA shall be made available to the public.

2. The Senate Report on the bill (Rept. No. 95-164) states, in regard to subsection 204(d)(3), that EIA will not be involved in making policy and should be allowed to transmit data without intervention by the Executive Branch. The clear implication is that the Senate intended that policy considerations not be used to limit the flow of data and that security considerations were not considered. In addition, because the subsection only refers to the "substance" of the report, there is a strong case for arguing that security considerations are not included within the subsection's coverage.

3. The possibility of disclosure of sensitive information because of subsection 204(f)(1) was reduced by that subsection's prohibition on disclosure except in accordance with the rules of the House or Senate and as permitted by law. Subsection 204(f)(3) contained a provision that matters need not be made public if such disclosure is otherwise prohibited by law. Also, the Senate Report stated that the Committee wanted to insure that existing law relating to the protection of information not be altered. An additional argument that subsection 204(f)(3) would not apply to intelligence sources and methods could be based upon the fact that the EIA would not collect such information and by its terms subsection 204(f)(3) would cover only information collected by the EIA.

4. For these reasons, this office determined that the bill presented no serious problem for protecting intelligence sources and methods. The Chief of the General Law Division of OGC was presented with these arguments and agreed with our position. As a precaution, the matter was also raised with Grenville Garside, Staff Director and Special Counsel, Senate Energy and Natural Resources Committee.

5. Section 205 of the bill as signed into law (P.L. 95-91) establishes an Energy Information Administration within the Department of Energy. Subsection (d) includes the language of section 204(d)(3) of S. 826 plus a statement that the Administrator of EIA need not obtain the approval of anyone within the Department of Energy in connection with the collection or analysis of any information. The latter statement clearly does not impinge upon authorities of the DCI because he is not "within the Department." Further, the language taken from the Senate bill must still be read in light of the intent reflected in the Senate Report. In addition, the Conference Report (S. Rept. 95-367) states at page 60 that "it is the conferee's intent to insure and maximize the independence of the data collection and analysis functions within the Department." Again, there seems to be no intent to include the DCI's responsibility for sources and methods within the coverage of the subsection.

6. Section 205(g) of the bill as signed into law incorporated section 204(f)(3) of S. 826 but deleted the exemption for "matters the disclosure of which is prohibited by law." The Conference Report states at page 60, however, that the conferees intended that applicable law relevant to information acquired by the Administrator would continue to apply as before creation of the Department of Energy. Thus, the conferees intended to leave unencumbered the DCI's responsibility for protecting sources and methods.

7. The provisions relating to Congress were incorporated by reference in section 205(c) of the bill as passed.

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